

STATE OF MICHIGAN
COURT OF APPEALS

TONI C. DUNLAP,

Plaintiff-Appellant,

v

ROBERT W. VANDYKE and LORRAINE J.
VANDYKE, d/b/a VAN'S VARIETY,

Defendants-Appellees.

UNPUBLISHED

September 28, 2004

No. 247699

Oceana Circuit Court

LC No. 02-003073-NO

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sustained injuries when she fell while walking on a sidewalk in front of a doorway of a building occupied by defendants. After plaintiff fell she felt ice on the ground. Plaintiff filed suit alleging that defendants failed to take reasonable care to prevent water from running off the roof over the doorway and causing an unnatural accumulation of ice and snow on the sidewalk adjacent to their property. The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10), concluding that the condition was open and obvious.¹

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

¹ The trial court did not address defendants' remaining arguments.

Plaintiff argues that the trial court erred in granting defendants' motion for summary disposition. We disagree and affirm.² Under the natural accumulation doctrine, a landowner has no duty to remove a natural accumulation of ice and snow from a municipal sidewalk abutting his property. However, liability may attach if the landowner has taken affirmative steps to alter the natural accumulation and in doing so increases the hazard of travel for the public. Liability may also attach if the landowner has taken affirmative steps to alter the condition of the sidewalk itself and in doing so causes an unnatural accumulation of ice and snow on the sidewalk. *Zielinski v Szokola*, 167 Mich App 611, 615-617; 423 NW2d 289 (1988), overruled in part on other grounds in *Robinson v Detroit (On Remand)*, 231 Mich App 361; 586 NW2d 116 (1998). No evidence showed that defendants took any affirmative steps to alter the condition of the sidewalk in front of the doorway or to route water onto the roof over the doorway, thereby increasing the flow of water from melting ice or snow onto the sidewalk. Even assuming that ice accumulated on the sidewalk between 10:00 p.m., when Lorraine VanDyke entered her residence through the doorway and saw no ice, and 10:30 p.m., when plaintiff slipped in front of the doorway, no evidence raised an issue of fact as to whether defendants took affirmative steps to increase the danger of the natural accumulation. *Id.* Defendants were properly granted summary disposition.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood

² The trial court granted summary disposition in favor of defendants solely on the ground that the condition of which plaintiff complained was open and obvious. Defendants did not own or control the sidewalk on which plaintiff's injury occurred; therefore, application of the open and obvious danger doctrine, an aspect of premises liability, to the issue of whether a genuine issue of fact existed as to whether defendants were negligent was erroneous. A defendant who does not own or control premises on which an injury occurs cannot be held liable under a premises liability theory. *Derbabian v S & C Snowplowing, Inc*, 249 Mich App 695, 702; 644 NW2d 779 (2002). Nevertheless, we conclude that the trial court correctly granted defendants' motion for summary disposition, albeit for the wrong reason. *Portice v Otsego Co Sheriff's Dep't*, 169 Mich App 563, 566; 426 NW2d 706 (1988).